

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



UNITED STATES OF AMERICA

v.

Criminal No. 3:18CR129

KEVIN TURNER

MEMORANDUM OPINION

Kevin Turner, a federal inmate proceeding with counsel, filed a motion pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion," ECF No. 51). On August 26, 2022, Turner filed a MOTION TO WITHDRAW MOTION TO VACATE UNDER 28 U.S.C. § 2255. ("Motion to Withdraw," ECF No. 103.) At this late date, Federal Rule of Civil Procedure 41(a) (2) governs Turner's Motion to Withdraw. See Fed. R. Civ. P. 41(a) (2) ("Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."). Turner asks that the dismissal be without prejudice, but the asserted basis for dismissal bespeaks that no further proceedings are contemplated by Turner. (ECF No. 103, ¶ 9). The Government states that it has no objection to Turner's Motion to Withdraw and "requests that the Court grant it" (ECF No. 104, at 1.) The Government does not comment on whether the dismissal to which it agrees should be with or without prejudice. Accordingly, the MOTION TO WITHDRAW MOTION TO VACATE UNDER 28 U.S.C. § 2255 (ECF No. 103) will be granted, and the action will be dismissed without prejudice, but without leave to

amend. The 28 U.S.C. § 2255 Motion (ECF No. 51) will be denied without prejudice. A certificate of appealability will be denied.

The Clerk is directed to send a copy of the Memorandum Opinion to counsel of record.

It is so ORDERED.

/s/

REP

Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: September 21, 2022